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January 27, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: MM Docket No. 93-295

Dear Mr. Caton

Transmitted herewith, on behalf of Mt. Wilson FM Broadcasters, Inc., licensee of FM broadcast station KKGO, Los Angeles, California, are an original and four copies of its Comments in the above-referenced rule making proceeding.

Very truly yours

*Stanley S. Neustadt*  
Stanley S. Neustadt

SSN:btc

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

## Federal Communications Commission

In re Matter of	)	MM DOCKET NO. 93-295
	)	
Amendment of Section 73.202(b)	)	RM-8362
Table of Allotments,	)	
FM Broadcast Stations.	)	
(San Clemente, California)	)	

### COMMENTS OF MT. WILSON FM BROADCASTERS, INC.

Mt. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), by its attorneys, files these Comments in response to the Notice of Proposed Rule Making ("NPRM") released in the above-captioned matter on December 8, 1993. Mt. Wilson fully supports the proposal to delete Channel 285A at San Clemente, California from the FM Table of Allotments. In support of its position, Mt. Wilson states:

1. Mt. Wilson has an intense interest in the outcome of this proceeding. It is the licensee of Station KKGQ(FM), Los Angeles, California, which is licensed to operate on Channel 286B, the frequency adjacent to the San Clemente allotment. Because of the severe interference which would result from use of the allotment at San Clemente, Mt. Wilson has been opposing that allotment since late 1965, at which time the first proposal to allot Channel 285A to San Clemente was made. See FM Table of Assignments, 2 F.C.C.2d 647, at 649 (1966). The Commission did not have to face the interference problem, or more particularly, the

site availability problem in that proceeding, because another channel was available for allotment to San Clemente.

2. Mt. Wilson participated throughout the long course of the proceeding in which a second effort to have Channel 285A allotted to San Clemente proved successful. That proceeding commenced with the issuance of a Notice of Proposed Rule Making in 1984 and proceeded through petitions for reconsideration and appeals to the Commission until the allotment became final in November, 1988. San Clemente, California, 3 FCC Rcd. 6728 (1988). Mt. Wilson sought judicial review of the Commission's allotment of the channel, but its appeal was held to be premature. Mount Wilson FM Broadcasters, Inc. v. FCC, 884 F.2d 1462 (D.C. Cir. 1989). The Court of Appeals ruled that an appeal from the allotment would not properly lie until it was determined that a short-spacing waiver should be granted and an authorization for a station to operate was granted.

3. A number of applications which sought to use the allotment were filed, but all of them proposed a short-spaced site and requested waiver of the spacing requirement. Mt. Wilson intervened, and participated vigorously in the hearing, which resulted, in 1993, in denial of all of the applications. The Administrative Law Judge, the Review Board and the Commission concluded that waiver of the spacing requirement would not serve the public interest. On the Beach Broadcasting, 8 FCC Rcd. 3123, at 3127 (1993) (MO&O). This decision was based on the fact that no properly spaced transmitter site existed, and that the mutual

interference between the applicants and Station KKGQ would render the proposal totally unacceptable.

4. This short background statement has been set forth so that the overwhelming importance of deleting the San Clemente allotment can begin to be understood. The Commission was aware by the time that reconsideration of the initial allotment of the channel to San Clemente was sought that no properly spaced site was available.<sup>1/</sup> In the MO&O which ordered the institution of this proceeding looking toward deletion of the allotment, the Commission noted that if it had known in the first place that no properly spaced site was available, it would not have made the allotment, and that, having considered the waiver requests, it has concluded that a properly spaced station may never be possible in light of the continuing and vigorous opposition of the Marine Corps. Accordingly, it ordered that this proceeding be initiated to delete the allotment. The importance of taking this action is highlighted in Commissioner Duggan's concurring statement in which he notes that as a consequence of the Commission's adhering to its original allotment, unwitting applicants have been sent through an eight-year regulatory maze, even though it had become clear that the Marine base could not be used as a transmitter site.

5. The harm of permitting a channel allotment to remain in effect when its effectuation in accordance with the Commission's requirements is highly questionable extends beyond the costs, both

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<sup>1/</sup> All properly spaced sites would have been on the grounds of Camp Pendleton, a U.S. Marine base which would not permit such an installation.

material and otherwise, to applicants which might seek authorizations. Each highly questionable application, as in this case, involves other parties or existing stations<sup>2/</sup> which might be implicated and the governmental processes of the Commission and possibly of the judicial system. The Commission should be alert to the possibility that it might be misled by casual or merely polite statements of individual deponents such as, "of course we would always consider that" when in fact every objective consideration would lead to the opposite conclusion.

6. In the instant case, there are two considerations which may not be clear from the reported decisions which establish that it would be foolhardy, if not frivolous, to grant a waiver for a station to operate on Channel 285A at San Clemente. Evidence was adduced at the hearing on the San Clemente applications which provides considerably more detailed information than was available at the allotment rule making proceeding. The Commission's MO&O in the licensing proceeding sets forth the extent of the interference which would be caused and received by a San Clemente station and Station KKGQ (see also NPRM, ¶ 7). It was that interference which constituted the primary basis for the denial of the applications. However, those figures reflect the evidence which was most favorable to the applicants. Station KKGQ is a super-power FM station, which operates from a very high antenna site with a power

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2/ For example, in the San Clemente proceeding the existing local station felt it necessary to supply evidence of the extent to which it served local needs in order to rebut allegations that it was failing to do so.

20 times greater than would be permissible for a Class B FM station. The interference caused to Station KKG0 as reflected in the Commission's MO&O assumed that Station KKG0 was operating with maximum Class B facilities, or 1/20 of its actual power. This was appropriate because the Rules only protect Station KKG0 as though it were a maximum Class B facility. The interference received by the San Clemente proposal as set forth in the MO&O, although so great as to require denial of the application, was also based on the assumption that Station KKG0 was operating with 1/20 of its actual power. If a station were ever authorized at San Clemente, it would in fact receive interference from the actual, not the presumed, KKG0 operation. The record in the hearing contains an exhibit which establishes that the interfering contour of Station KKG0 operating as actually licensed includes all of San Clemente and extends 7km beyond the southernmost boundary of that city. Not only would the entire city of license receive objectionable interference, but 76% of the total area which might be served by a San Clemente station would receive objectionable interference. In other words, on the day a San Clemente station would commence operation on Channel 285A, its entire city of license and 76% of the area within its service contour would be subject to objectionable interference.

7. One other consideration is pertinent. The San Clemente applications in the hearing were all filed before 1989. In that year, as the Commission notes in the MO&O (§§ 8-10), the Commission adopted new rules which permit an applicant to apply for

a short-spaced transmitter site provided that the service of the station to which it is short spaced would be protected from interference. Even this new Commission reliance on contour overlap, in addition to spacing, however, would not make possible a San Clemente operation on Channel 285A. As the MO&O indicates, evidence was submitted during the preliminary stages of the hearing in an effort to demonstrate that Station KKGO service could be protected by the utilization of a directional antenna at San Clemente. This effort failed; the Commission concluded that the proposed directional antenna would not provide the required contour protection to Station KKGO. Indeed, the Exhibit on which the Commission's conclusion is based states:

On the radial bearing 150 degrees True from KKGO(FM), the height of the radiation center of the KKGO(FM) antenna above average radial elevation is 1372 meters. Adjusting this height downward by 730 meters results in an antenna height above average radial elevation of 642 meters. At this antenna height, and at an effective radiated power of 50 kW, the distance to the KKGO(FM) protected 0.5 mV/m F(50,50) contour is 102 kilometers, and the distance to the KKGO(FM) interfering 0.5 mV/m F(50,10) contour is 128 kilometers. The result is that the protected contour of KKGO(FM) encompass[s]es nearly all of the city of San Clemente, and the interfering contour of KKGO(FM) encompasses the entire service area of the proposed Portola operation. It is therefore concluded that it is not possible for Portola Broadcasting Corporation, or any other applicant for the San Clemente allotment, to provide contour protection to station KKGO(FM) in accordance with Section 73.215 of the Commission's Rules.

8. Under all of these circumstances, it is abundantly clear that the Commission's conclusion that the allotment of

Channel 285A to San Clemente may no longer serve the public interest is fully supported, and that in accordance with the precedents which the Commission cites, the allotment must be deleted.

Respectfully submitted,

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January 27, 1994